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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/919,385

07/31/2001

Ronald F. Woostemeyer

PROS1100-1

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09/07/2007

SPRINKLE IP LAW GROUP

1301 W. 25TH STREET

SUITE 408

AUSTIN, TX 78705

EXAMINER

OYEBISI, OJO O

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

09/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/919,385

**Applicant(s)**

WOESTEMEYER ET AL.

**Examiner**

OJO O. OYEBISI

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/22/07 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al (Hereinafter Anderson, US PAT 5,974,396) in view of Newswire (PR Newswire. "net.Genesis Announces Most Valuable Customer TM Segmentation Package." New York: Mar 22, 1999. p.g 1; 3 pages)

**Re Claim 1:** Anderson discloses a market analysis system comprising:

- A computer processor (FIG 3; Ref 64);
- A computer readable storage medium (FIG 3 Ref 64 "memory");
- A database stored on the computer readable medium comprising aggregate market data (Column 2 line 67-Column 3 line 7); and
- A software program stored on the computer readable medium executable to;
  - o Receive a set of transaction data from an electronic exchange (Column 2, lines 46-51);
  - o Store the set of transaction data in the database (Column 2 line 67-Column 3 line 7)
  - o Define a standard pricing group from the aggregate market data (Column 3, lines 65-Column 4 lines 6; and Column 5 lines 55- 61); and
  - o Apply a statistical analysis to the standard pricing group (Column 6, lines 16-22)

Anderson does not explicitly disclose

- Where the market transactions are conducted

electronically via the Internet

Newswire discloses "net.Genesis Corp., the leader in e-business intelligence

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solutions for Internet enabled and Fortune 500 enterprise." Further disclosed is the MVC segmentation package that "empowers e-businesses to quickly identify their best and worst customers." Information derived from MVC's sophisticated visitor segmentation model greatly enhances an e-business ability to gain a holistic view of their best and worst online customers." (See Abstract). It would have been obvious to include the teachings of Newswire to the disclosure of Anderson so that as e- businesses continue to proliferate, so too will the need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

**Re Claim 2:** A Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis, a correlation analysis, a request for quote analysis and an auction analysis (Column 10, lines 31-53)

**Re Claim 3:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is executable to store a set of results from the statistical analysis in a database (Column 2 line 67-Column 3 line 7)

**Re Claim 4:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to communicate a set of results of the application of the statistical analysis to a user (Column 11, lines 6-19)

**Re Claim 5:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is executable to communicate the set of

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results in a format compatible with a revenue management software program (Column 4, lines 19-49; "encoding the data into digital format;" revenue management software in the form of membership cards and promotional literature such as coupons).

**Re Claim 6:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to communicate the set of results in response to a user request (Column 3 line 65-Column 4 line 6)

**Re Claim 7:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to return a summary of the set of transaction data (Column 3, lines 65-Column 54 line 6 "retrieve particular types of information..., queries may relate to determining purchasing behaviors of retail consumers.")

**Re Claim 8:** Anderson discloses a system for analyzing transactions at an electronic exchange comprising:

- A database storing a set of transaction data (Fig 1; Ref 26; Column 2 line 67-Column 3 line 7);
- A configuration manager operable to define a standard pricing group from the Set Of transaction data (Column 3, lines 65-Column 4 lines 6; and Column 5 lines 55-61);
- A market analyzer operable to apply a statistical analysis to the standard pricing group (FIG 1; Ref 30,32)

Anderson does not explicitly disclose wherein

- Transaction data is received from the electronic exchange where transactions are conducted electronically via the Internet.

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Newswire discloses "net.Genesis Corp., the leader in e-business intelligence solutions for Internet enabled and Fortune 500 enterprise." Further disclosed is the MVC segmentation package that "empowers e-businesses to quickly identify their best and worst customers." Information derived from MVC's sophisticated visitor segmentation model greatly enhances an e-business ability to gain a holistic view of their best and worst online customers." (See Abstract). It would have been obvious to include the teachings of Newswire to the disclosure of Anderson so that as e- businesses continue to proliferate, so too will the need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

**Re Claim 9:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the standard pricing group further comprises an aggregation of data from the set of transaction data (Column 5, lines 50-61; "Product clusters; consumer clusters.")

**Re Claim 10:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis a correlation analysis, a request for quote analysis and an auction analysis (Column 10, lines 31-53).

**Re Claim 11:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses

- A communications server operable to:

Receive a set of transaction from an electronic exchange (Column 2, lines 46-51);

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- o Communicate the set of transaction to the market analyzer (FIG 1; 24-26-30-32)
- o Receive a request for the set of results from a supplier (Column 3, lines 65-66 "Specific queries"; and
- o Communicate the set of results to the supplier (Column 3, lines 67-Column 4 line 1 "Retrieve particular types of information from the relational database.")

**Re Claim 12:** Anderson in view of Newswire discloses the claimed system and Anderson further

- An input interface further comprising
  - o A configuration interface operable to receive configuration information (Column 2, lines 40-55)
  - o A transaction interface operable to receive the set of transaction data (FIG 1 Ref 24-26; consumer data flow); and
  - o A request interface operable to receive a request (Column 3, lines 65-66 "input specific queries"); and
- An output interface (Column 3 line 67-Column 4, line 6; "retrieve specific types of information.")

**Re Claim 13:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses comprising a configuration manager operable to select a statistical analysis model to apply to the standard pricing group from a set of statistical analysis models and wherein the market analyzer is further operable to apply the selected statistical analysis model to the standard pricing group (Column 6, lines 36-48)



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**Re Claim 14:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the configuration manager further comprises:

- A standard pricing group manager operable to define the standard pricing group (Column 5, lines 55-61);
- A model manager operable to define the statistical analysis applied (Column 6 lines 36-43 "Statistical extracts"; and
- A supplier manager operable to manage information regarding suppliers (FIG 1 Ref 20 and 22)

**Re Claim 15:** Anderson discloses the claimed system *supra* but does not explicitly disclose wherein the configuration manager is operable to define default values and standard parameters for the statistical analysis model. Official Notice is taken that it was notoriously old and well known in the art to provide default values for parameters in statistical models if no direct parameters are available. It would have been obvious to a person of ordinary skill in the art to include this step to Anderson so that useful data can be generated, even in the event that all necessary parameters are not known. By providing default values the user can still be presented with an estimated predictive behavior model as opposed to nothing.

**Re Claim 16:** Anderson in view of Newswire discloses the claimed system and Anderson further comprises a request manager operable to: receive a request from a supplier for a set of results of the application of the statistical analysis; retrieve the set of results from the database; and communicate the results to the supplier (Column 3, lines 65-Column 4 lines 6)

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**Re Claim 17:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the request manager is further operable to return a summary of the set of transaction data to the supplier (FIG 12(a); "Transaction Summary").

**Re Claim 18:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the request manager is further operable to communicate the set of results in a format compatible with a revenue management software program (Column 4, lines 19-49; "encoding the data into digital format;" revenue management software in the form of membership cards and promotional literature such as coupons)

**Re Claim 19:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses a retrieval manager operable to retrieve the set of results from the database (Column 3 lines 65-Column 4 line 6); and an aggregation manager operable to summarize the set of transaction data (FIG 12(a); "Transaction Summary").

**Re Claim 20 and 21:** Anderson discloses the claimed system supra but does not explicitly disclose the steps further comprising a task manger operable to schedule the application of the statistical analysis and prompt the market analyzer to apply the statistical analysis. Official Notice is taken that it was old and well known in the art at the time of invention to schedule the automatic generation of statistical models for a business at regular intervals so that appropriate tracking of progress and results can be made. It would have been obvious to a person of ordinary skill to include these steps to Anderson so that a user can have data produced, at regular intervals that can be

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analyzed and compared over time, without having to continuously request this information.

**Re Claims 22-30:** Further method claims would have been obvious to perform from the previously rejected system claims 1-21 and are therefore rejected using the same art and rationale.

**Re Claims 31-36:** Further system claims contain essentially the same limitations as previously rejected system claims 8, 10, 18, 20, 17 and 11 respectively and are therefore rejected using the same art and rationale.

### **Response to Arguments**

Applicant's arguments filed 06/22/07 have been fully considered but they are not persuasive.

The applicant argues in substance that the primary reference, Anderson, fails to disclose where the market transactions are conducted electronically via the Internet, and the applicant further argues that one of ordinary skill in the art would not have been motivated to combine/incorporate the teachings of Newswire into Anderson to cure the deficiency of Anderson. The examiner maintains that Anderson does not expressly disclose where the market transactions are conducted electronically via the internet. However, Newswire expressly discloses "Where the market transactions are conducted electronically via the Internet." (i.e., Newswire discloses "net.Genesis Corp., the leader in e-business intelligence solutions for Internet enabled and Fortune 500 enterprise." Further disclosed is the MVC segmentation package that "empowers e-businesses to quickly identify their best and worst customers." Information derived from MVC's

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sophisticated visitor segmentation model greatly enhances an e-business ability to gain a holistic view of their best and worst online customers." (See Abstract). Thus, It would have been obvious to combine the teachings of Newswire and Anderson, and the motivation for this combination would have been: as e- businesses continue to proliferate, so too will the need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

The applicant further argues that Anderson fails to disclose a standard pricing group from the aggregate market data and applying a statistical analysis to the standard pricing group. The examiner maintains that Anderson discloses a standard pricing group from the aggregate market data (i.e., the method and system according to the present invention provide a retail business entity whether an individual retail store or a retail chain of stores (hereafter "retailer") with the ability to determine and analyze buying behaviors with retailer consumer customers (hereafter simply "consumers"). By categorizing consumer retail products (hereafter "products") into product groupings referred to as product clusters and/or consumers by specific characteristics and demographics into consumer clusters, consumer buying behaviors may be identified, tracked, and employed by retailers in direct, consumer marketing as described in more detail below. For purposes of simplicity in describing exemplary embodiments, the present invention is referred to as the "frequent shopper system," see col.5 lines 50-65.). Anderson further discloses applying a statistical analysis to the standard pricing group (i.e., marketing analysis tools 32 such as conventional statistical analysis

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software packages, e.g. SPSS, Cognos Impromptu.TM., Cognos Power Play.TM., etc., and print and direct mailing subsystem 36 are used to create value-added information targeted to particular consumers and a medium (e.g. advertisements, newsletters, coupons, etc.) for communicating that information with a consumer. See col.6 lines 10-25).

Lastly, the applicant argues in substance that Anderson fails to teach the electronic exchange as claimed by the applicant. Contrary to the applicant's assertion, the examiner maintains that given the broadest reasonable interpretation of the claim language, as the data gleaned from the POS terminals is done via bar code scanning or magnetic strip reading (Column 3, lines 41-50) and this information is relayed by electronic means to a computer (Column 7, lines 31-63). It thus appears clear that this is an 'electronic exchange.'

### ***Conclusion***

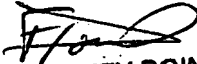
Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571) 272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached on (571)272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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FRANTZY POINVIL  
PRIMARY EXAMINER  
A4362